

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DAVID CARL GUSTAFSON,

Plaintiff,

v.

CITY OF WEST RICHLAND,

Defendants.

NO. CV-10-5040-EFS

NO. CV-10-5058-EFS

**ORDER GRANTING  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

DAVID CARL GUSTAFSON,

Plaintiff,

v.

CITY OF WEST RICHLAND; TRAVIS  
SCHEIBE; LANCE ERDMAN; DONNA  
NOSKI; DALE JACKSON; BRONSON  
BROWN; MARGARET JUDITH  
GRINSTEAD/RALSTON;

Defendants.

Before the Court, without oral argument, are Defendants' Motions for Summary Judgment Dismissal. No. CV-10-5040-EFS, ECF No. [68](#); No. CV-10-5058-EFS, ECF No. [51](#). Mr. Gustafson filed these two causes of action against the Defendant City of West Richland (both cases) and Defendants Travis Scheibe, Lance Erdman, Donna Noski, Dale Jackson, Bronson Brown, and Margaret Judith Grinstead/Ralston (collectively, "Individual Defendants") (CV-10-5058-EFS only), alleging various state and federal

1 causes of action arising out of an incident in which Mr. Gustafson was  
2 arrested by officers from the City of West Richland Police Department  
3 (WRPD). On October 19, 2010, the Court consolidated the two cases for  
4 discovery purposes only. No. CV-10-5040-EFS, ECF No. [29](#); CV-10-5058-EFS,  
5 ECF No. [15](#). Because the parties' filings relating to Defendants' motions  
6 for summary judgment are identical in both cases, except that the  
7 Individual Defendants are included in Defendants' filings in CV-10-5058-  
8 EFS,<sup>1</sup> the Court addresses these motions jointly.

9 **I. FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>**

10 This case arises out of a May 2, 2009 incident in which Mr.  
11 Gustafson was arrested by WRPD officers. Responding to a report of a  
12 domestic violence assault made by Mr. Gustafson's ex-wife Margaret  
13 Grinstead, Officer Travis Scheibe observed Mr. Gustafson standing outside

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14 <sup>1</sup> The only filing in CV-10-5058-EFS that differs substantively from  
15 the filings in CV-10-5040-EFS is the Declaration of David Force, which  
16 includes six exhibits; Mr. Force's declaration in CV-10-5040-EFS includes  
17 only one exhibit. See No. CV-10-5040-EFS, ECF No. [74](#); No. CV-10-5058-  
18 EFS, ECF No. [57](#).

19 <sup>2</sup> In connection with Defendants' motion, the parties submitted an  
20 Agreed Statement of Undisputed Facts. No. CV-10-5040-EFS, ECF No. [82](#);  
21 No. CV-10-5058-EFS, ECF No. [65](#). The Court treats these facts as  
22 established consistent with Federal Rule of Civil Procedure 56(d).  
23 Additionally, the Court takes as true all uncontested assertions in the  
24 declarations submitted by Defendants. See *Anderson v. Liberty Lobby,*  
25 *Inc.*, 477 U.S. 242, 255 (1986).  
26

1 of the residence using his cellular phone. Two other WRPD Officers,  
2 Officer Kelly and Sergeant Bravo also responded. On interviewing both  
3 Mr. Gustafson and Mrs. Grinstead, Officer Scheibe learned that a physical  
4 altercation had occurred as a result of a dispute over the divorced  
5 couple's use of the refrigerator and the location of items in the house.  
6 Both Mr. Gustafson and Ms. Grinstead stated that in the course of the  
7 altercation, Mr. Gustafson held Ms. Grinstead down and used an "arm bar"  
8 and "choke hold" to subdue her. Mr. Gustafson was also armed with  
9 several knives and a gun. Officer Scheibe placed Mr. Gustafson under  
10 arrest for assault in the fourth degree.

11 Officer Scheibe handcuffed Mr. Gustafson with two sets of handcuffs  
12 and placed him in his police car. When Officer Schiebe removed Mr.  
13 Gustafson from his vehicle at the Benton County Regional Jail, Mr.  
14 Gustafson complained of leg pain, and Officer Schiebe transported Mr.  
15 Gustafson in a wheelchair. Officer Schiebe asserts that during the  
16 entire time Mr. Gustafson was in custody he never complained of heart or  
17 chest pain.

18 Mr. Gustafson's account of this incident differs significantly: Ms.  
19 Grinstead was the aggressor; he did not choke her but instead used only  
20 a non-injurious "arm bar"; he complained profusely of pain to his arms,  
21 legs, and chest while in WRPD custody; and he suffered a heart attack  
22 while in WRPD custody. However, Mr. Gustafson has failed to provide  
23 factual support for his assertions in the form of affidavits,  
24 declarations, deposition transcripts, sworn answers to interrogatories,  
25 or party admissions. See Fed. R. Civ. P. 56(e)(2) ("When a motion for  
26 summary judgment is properly made and supported, an opposing party may

1 not rely merely on allegations or denials in its own pleadings; rather,  
2 its response must - by affidavits or otherwise provided in this rule -  
3 set out specific facts showing a genuine issue for trial."); see also  
4 Court's Notice to Pro Se Litigants of the Dismissal and/or Summary  
5 Judgment Rule Requirements, No. CV-10-5040-EFS, ECF No. [75](#) at 2-3; No.  
6 CV-10-5058-EFS, ECF No. [58](#) at 2-3 ("If the party you are suing meets its  
7 burden under Rule 56 by submitting affidavits or other sworn testimony,  
8 you cannot rely only on what your complaint says. Instead, you must  
9 provide specific facts using the type of evidence set forth above.").<sup>3</sup>  
10 Thus, for the purposes of this summary judgment motion, the Court takes  
11 as true the facts stated in Defendants' uncontradicted declarations.

## 12 II. DISCUSSION

13 Construed liberally, Mr. Gustafson's complaints in these two matters  
14 allege causes of action for: 1) violation of his Fourth, Fifth, and  
15 Fourteenth Amendment rights under § 1983; 2) violation of 42 U.S.C.  
16 § 14141; 3) violation of 42 U.S.C. §§ 241 and 242; 4) violation of the  
17 Americans with Disabilities Act; 5) false arrest under Washington common  
18 law; and 6) criminal violations under various Washington statutes. For  
19 the reasons discussed below, the Court grants Defendants' motions and  
20 dismisses Mr. Gustafson's claims.

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22 <sup>3</sup> While Defendants have submitted Mr. Gustafson's responses to five  
23 sets of interrogatories with their motion in No. CV-10-5058-EFS, Mr.  
24 Gustafson's responses were not made under oath and the Court does not  
25 consider them for purposes of this motion. See Force Decl., No. CV-10-  
26 5058-EFS, ECF No. [57](#) Ex. 2-6.

1           **A.     Summary Judgment Standard**

2           Summary judgment is appropriate if the "pleadings, the discovery and  
3 disclosure materials on file, and any affidavits show that there is no  
4 genuine issue as to any material fact and that the moving party is  
5 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Once  
6 a party has moved for summary judgment, the opposing party must point to  
7 specific facts establishing that there is a genuine issue for trial.  
8 *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). If the nonmoving  
9 party fails to make such a showing for any of the elements essential to  
10 its case for which it bears the burden of proof, the trial court should  
11 grant the summary judgment motion. *Id.* at 322. "When the moving party  
12 has carried its burden of [showing that it is entitled to judgment as a  
13 matter of law], its opponent must do more than show that there is some  
14 metaphysical doubt as to material facts. In the language of [Rule 56],  
15 the nonmoving party must come forward with 'specific facts showing that  
16 there is a *genuine issue for trial*.'" *Matsushita Elec. Indus. Co. v.*  
17 *Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986) (internal citation  
18 omitted) (emphasis in original).

19           **B.     Mr. Gustafson's § 1983 Claims**

20           Mr. Gustafson alleges claims for violations of his constitutional  
21 rights against both the City of West Richland and the Individual  
22 Defendants.

23           **i.     City of West Richland**

24           Section 1983 provides a cause of action for "the deprivation of any  
25 rights, privileges, or immunities secured by the Constitution and laws"  
26 of the United States by any person acting under color of state law. 42

1 U.S.C. § 1983. Municipalities may not be liable under § 1983 on a  
2 *respondeat superior* theory, but rather, a § 1983 plaintiff must show that  
3 his rights were violated as a result of an official municipal policy or  
4 custom. *Monell v. Dept. of Soc. Servs.*, 436 U.S. 658, 690-91 (1978).  
5 In order for the municipality to be liable, there must be a "direct  
6 causal link" between the official policy or custom and the constitutional  
7 violation. *City of Canton v. Harris*, 489 U.S. 378, 385 (1989).  
8 Furthermore, the plaintiff must in fact have suffered harm as a result  
9 of the municipal policy or custom. *City of Los Angeles v. Heller*, 475  
10 U.S. 796, 799 (1986).

11 Here, Mr. Gustafson has not identified a policy or custom of the  
12 City of West Richland or the WRPD that resulted in the alleged violation  
13 of his constitutional rights. Accordingly, the City of West Richland can  
14 not be held liable for any of the constitutional violations allegedly  
15 perpetrated against Mr. Gustafson, and the Court grants Defendant the  
16 City of West Richland's motion in this regard.

17 **ii. Individual Defendants**

18 Defendants assert that Mr. Gustafson's claims against the Individual  
19 Defendant must be dismissed under the doctrine of qualified immunity.  
20 The doctrine of qualified immunity protects government officials "from  
21 liability for civil damages insofar as their conduct does not violate  
22 clearly established statutory or constitutional rights of which a  
23 reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800,  
24 818 (1982). District courts evaluating a claim of qualified immunity  
25 must analyze two questions: first, whether "the facts alleged show the  
26 officer's conduct violated a constitutional right," and second, whether

1 the constitutional right at issue was "clearly established" at the time  
2 of the alleged misconduct. *Saucier v. Katz*, 533 U.S. 194, 201 (2001).  
3 District Court Judges are "permitted to exercise their sound discretion  
4 in deciding which of the two prongs of the qualified immunity analysis  
5 should be addressed first in light of the circumstances in the particular  
6 case at hand." *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

7 Here, because Mr. Gustafson has presented no sworn, admissible  
8 evidence in opposition to Defendants' motion, the Court finds that the  
9 circumstances of the case support turning first to the first *Saucier*  
10 condition: whether the facts alleged show that the officers' conduct  
11 violated a constitutional right. While Mr. Gustafson's complaint and  
12 moving papers include several conclusory statements regarding the  
13 unconstitutionality of the Individual Defendants' actions, Mr. Gustafson  
14 has presented no admissible evidence to demonstrate that the Individual  
15 Defendants violated his constitutional rights. Accordingly, the  
16 Individual Defendants are entitled to qualified immunity and Defendants'  
17 motion is granted in this regard.

18 **C. Mr. Gustafson's § 14141 Claim**

19 Mr. Gustafson's complaint in CV-10-5040-EFS alleges a claim against  
20 the City of West Richland under 42 U.S.C. § 14141. Section 14141  
21 prohibits employees of any governmental agency with responsibility for  
22 the administration of juvenile justice or the incarceration of juveniles  
23 from engaging in a pattern or practice of conduct that deprives one of  
24 their civil rights. However, § 14141 only provides for a civil cause of  
25 action brought by the United States Attorney General. See 42 U.S.C. §  
26 14141(b) ("[T]he Attorney General, for or in the name of the United

1 States, may in a civil action obtain appropriate equitable and  
2 declaratory relief to eliminate the pattern or practice."). Section  
3 14141 does not provide a private cause of action that may be brought by  
4 individuals. See, e.g., *Clarke v. Upton*, No. CV-F-07-888-OWW/SMS, 2008  
5 WL 2025079 at \*19 (E.D. Cal. May 9, 2008) (finding that § 14141 "does not  
6 provide a private right of action."); *Evans v. U.S. Dept. Of Educ. ex rel*  
7 *Cal. St. Univ. Stanislaus*, No. C 05-03185 SI, 2006 WL 294800 at \*2  
8 ("[O]nly the Attorney General may initiate a civil action to enforce 42  
9 U.S.C. § 14141."). Accordingly, this claim must be dismissed, and the  
10 Court grants Defendants' motion in this regard.

11 **D. Mr. Gustafson's §§ 241 & 242 Claim**

12 Mr. Gustafson's complaints allege claims under 18 U.S.C. §§ 241 &  
13 242. Just as with 42 U.S.C. § 14141, however, sections 241 and 242 do  
14 not provide a private cause of action that may be pursued by individuals.  
15 See *Peabody v. United States*, 394 F.2d 175, 177 (9th Cir. 1968).  
16 Accordingly, Mr. Gustafson's section 241 and 242 claims must be dismissed  
17 and the Court grants Defendants' motion in this regard.

18 **E. Mr. Gustafson's Americans with Disabilities Act Claim**

19 Mr. Gustafson alleges a claim under the Americans with Disabilities  
20 Act (ADA), 42 U.S.C. § 12111 et seq., alleging that WRPD officers failed  
21 to provide him a "reasonable accommodation" for his disability when  
22 arresting him. While § 203 of the ADA does provide a private cause of  
23 action for discrimination against the disabled by public entities, see  
24 *Barnes v. Gorman*, 536 U.S. 181, 184-85 (2002), Mr. Gustafson has not  
25 presented any admissible evidence to demonstrate that he is disabled,  
26 that the WRPD failed to provide him a reasonable accommodation, or that



1 he was harmed as a result of WRPD's alleged discrimination. Accordingly,  
2 because Mr. Gustafson has provided no factual support for his ADA claim,  
3 the Court grants Defendants' motion in this regard.

4 **F. Mr. Gustafson's False Arrest Claim**

5 Mr. Gustafson also alleges a state cause of action for false arrest  
6 and imprisonment by WRPD officers. Under Washington law, the "existence  
7 of probable cause is a complete defense to an action for false arrest,  
8 false imprisonment, or malicious prosecution." *Hanson v. City of*  
9 *Snohomish*, 121 Wn.2d. 552, 563-64 (1993). Probable cause exists "when  
10 an officer has reasonable grounds to believe a suspect has committed or  
11 is committing a crime due to the surrounding circumstances." *McBride v.*  
12 *Walla Walla Cnty.*, 95 Wn. App. 33, 38 (1999) (citing *Washington v.*  
13 *Gonzales*, 46 Wn. App. 388, 395 (1986)). Whether probable cause exists  
14 or not "is a reasonableness test, considering the time, place, and  
15 circumstances, and the officer's special expertise in identifying  
16 criminal behavior." *Id.* (citing *Gonzales*, 46 Wn. App. at 38).

17 Here, the uncontested facts in Defendants' declarations are  
18 sufficient to establish probable cause. Officer Scheibe responded to Ms.  
19 Grinstead's residence to investigate a domestic violence complaint that  
20 Ms. Grinstead had made. When interviewed, both Ms. Grinstead and Mr.  
21 Gustafson acknowledged that a physical altercation had occurred, and both  
22 parties stated that Mr. Gustafson used physical force to restrain Ms.  
23 Grinstead. Officer Schiebe observed fresh abrasions and bruising on the  
24 back of Ms. Grinstead's neck that were consistent with the use of force.  
25 Taken together, these facts establish reasonable grounds for the WRPD  
26 officers to believe that a domestic violence assault had occurred and

1 that Mr. Gustafson had committed it. Because the officers had probable  
2 cause to believe that Mr. Gustafson had committed domestic violence  
3 assault, Mr. Gustafson's false arrest claim must fail and the Court  
4 grants Defendants' motion in that regard.

5 **G. Mr. Gustafson's Criminal Claims**

6 Mr. Gustafson's complaints allege that the Individual Defendants'  
7 actions violate various Washington criminal statutes, including RCW  
8 9A.36.011, .021, and .031 (first, second, and third degree assault); RCW  
9 9.62.010 (malicious prosecution); RCW 9A.36.050 (reckless endangerment);  
10 RCW 9A.36.080 (malicious harrassment); RCW 9A.28.040 (criminal  
11 conspiracy); RCW 9A.80.010 (official misconduct); RCW 42.20.080 (other  
12 violations by public officers); and RCW 42.20.010 (delegation of powers  
13 for profit). However, just as 18 U.S.C. §§ 241 and 242 are criminal  
14 statutes that do not provide a private cause of action, these Washington  
15 statutes proscribe criminal conduct and do not provide a private civil  
16 cause of action. Accordingly, these claims must be dismissed, and  
17 Defendants' motion is granted in this regard.

18 **G. Mr. Gustafson's Malicious Harassment Claim**

19 Finally, Mr. Gustafson's complaint in No. CV-10-5040-EFS alleges a  
20 claim for malicious harassment under RCW 9A.36.083, commonly referred to  
21 as "the 'hate crimes statute.'" See *San Antonio v. Heaton*, No. 40479-2-I,  
22 1998 WL 184529 at \*1 (1998). While malicious harassment is ordinarily  
23 a criminal charge, Washington law does provide a private cause of action  
24 for malicious harassment. See RCW 9A.36.080, .083. To succeed on a  
25 claim for malicious harassment, a plaintiff must show that the defendant  
26 injured him, damaged his property, or threatened him because of their

1 race, color, religion, ancestry, national origin, gender, sexual  
2 orientation, or mental, physical, or sensory handicap. *Id.* Because Mr.  
3 Gustafson has provided no factual support for this claim, the Court  
4 grants Defendants' motion in this regard.

5 **III. CONCLUSION**

6 As discussed above, Mr. Gustafson has not presented any admissible  
7 evidence in support of his claims. Defendants, on the other hand, have  
8 met their burden under Rule 56 of showing that there are no material  
9 issues of fact and that they are entitled to judgment as a matter of law.  
10 For these reasons, the Court grants Defendants' motions and dismisses  
11 both actions.

12 Accordingly, **IT IS HEREBY ORDERED:**

13 1. Defendants' Motions for Summary Judgment, **No. CV-10-5040-EFS,**  
14 **ECF No. [68](#); No. CV-10-5058-EFS, ECF No. [51](#),** are **GRANTED.**

15 2. The file in these matters shall be **CLOSED.**

16 3. All hearings and pending motions are **STRICKEN.**

17 4. **Judgment** shall be **ENTERED** with prejudice in Defendants' favor.  
18 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
19 this Order and provide copies to counsel and Mr. Gustafson.

20 **DATED** this 7th day of November, 2011.

21  
22 s/Edward F. Shea

23 EDWARD F. SHEA  
24 United States District Judge  
25